



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0552; FRL-9900-67-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Construction Permit Program Fee Increases; Construction Permit Regulation of PM_{2.5}; Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the three State Implementation Plan (SIP) revision packages submitted by the State of Colorado on June 11, 2008, June 18, 2009, and May 25, 2011. EPA is proposing to approve the June 11, 2008 and June 18, 2009 submittal revisions to Regulation 3, Part A, Section VI.D.1., in which the State, among other things, increased the construction permit processing fees. EPA proposes approval of Colorado's May 25, 2011 submittal, which addresses regulation of fine particulate matter (PM_{2.5}) under Colorado's construction permit program. EPA also proposes to approve minor editorial changes to Regulation 3, Parts A, B, and D in the May 25, 2011 submittal. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[Insert date 21 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0552, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- E-mail: komp.mark@epa.gov
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2013-0552. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6022, komp.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

- (i) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (ii) The initials NAAQS mean or refer to national ambient air quality standards.
- (iii) The initials NSR mean or refer to New Source Review.
- (iv) The initials PM mean or refer to particulate matter.
- (v) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (vi) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (vii) The initials SIP mean or refer to State Implementation Plan.
- (viii) The initials tpy mean or refer to tons per year.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for preparing your comments. When submitting comments, remember to:
 - Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
 - Follow directions and organize your comments;
 - Explain why you agree or disagree;
 - Suggest alternatives and substitute language for your requested changes;
 - Describe any assumptions and provide any technical information and/or data that you used;
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats;
and
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The State's June 11, 2008 and June 18, 2009 revisions, adopted on October 18, 2007 and September 18, 2008 respectively, contain fee increases in Part A, Section VI.D.1. of Regulation 3. The fee increases for processing construction permits reflect increased fees in Colorado Revised Statute Section 25-7-114.7.

In the State's May 25, 2011 submittal, the State addressed requirements for regulation of PM_{2.5} in the State's construction permit program. In particular, Colorado included PM_{2.5} in the "air pollutant" and "criteria pollutant" definitions in Part A, Sections I.B.6 and I.B.16, and set PM_{2.5} permitting thresholds in Part B, Sections II.D.2 and II.D.3. Sources located in a nonattainment area for any criteria pollutant are exempt from obtaining a construction permit if the source's annual uncontrolled actual emissions of PM_{2.5} are less than one ton per year (tpy). In areas that are in attainment for all criteria pollutants, sources with uncontrolled actual emissions less than five tpy are exempt from construction permits.

The State also made minor editorial changes throughout Regulation 3, as documented in the May 25, 2011 submittal. Finally, the cover letter for the May 25, 2011 submittal indicated that the revision addressed the exclusion of ethanol production facilities from chemical process plants in the definition of major stationary source. However, as the submittal itself reflects, the

State of Colorado did not submit the exclusion and instead deferred any decision on the exclusion until all relevant pending matters at the federal level are resolved.

III. EPA Analysis of State's Submittals

The State's June 11, 2008 and June 18, 2009 revisions contained permitting fee increases in Part A, Section VI.D.1. of Regulation 3. The State increased its fees with the 2008 submittal to \$17.97 per ton for regulated pollutants and \$119.96 per ton for hazardous air pollutants. In the State's 2009 submittal, these fees were increased to \$22.90 and \$152.10, respectively. Section VI.D.1. also requires permit processing fees to be collected. We note that the Colorado Legislature increased the fees for permit processing in a 2008 bill that revised Colorado Revised Statute Section 25-7-114.7 as referenced in Section VI.D.1. We consider the new submittal to reflect these revised fees.

Based on EPA's review of the submittals, it appears that Colorado intended to replace the first revision of fees appearing in the June 11, 2008 with the June 18, 2009 submittal. Therefore, the latter revision supersedes the earlier revision. As of the day of the 2009 submittal, the Colorado Legislature revised the fees in Colorado Revised Statute Section 25-7-114.7 as referenced in Section VI.D.1.

However, both submittals contain increased emission fees that appear to be for the purpose of implementing and enforcing the State's Title V program. These emission fee increases are non-SIP regulatory fees and therefore any increases are outside the scope of the SIP revision process. Conversely, the permit processing fees, at least with respect to the processing

of construction permits, are appropriate for approval into the SIP. See, CAA Section 110(a)(2)(L)(i). To the extent these fee increases impact processing of construction permits, EPA approves the increase.

The May 25, 2011 submittal revised the definition of “air pollutant” in Part A of Regulation Number 3 to add PM_{2.5}. Consistent with EPA’s 2008 PM_{2.5} New Source Review (NSR) Implementation Rule (73 FR 28321), the submittal revised the definition of “criteria pollutant” in Part A to include PM_{2.5} and to recognize sulfur dioxide and nitrogen oxides as precursors to PM_{2.5}. With these changes, PM_{2.5} and its precursors are regulated under Colorado’s construction permit program in Part B of Regulation Number 3.¹

The State correspondingly revised Part B to reflect regulation of PM_{2.5}. In particular, Colorado added emission thresholds below which sources of PM_{2.5} are exempt from construction permit requirements. In areas which are nonattainment for any criteria pollutant, facilities with total annual uncontrolled emissions of PM_{2.5} less than one ton per year (tpy) are exempt; in areas that are in attainment for all criteria pollutants, facilities with total annual uncontrolled emissions of PM_{2.5} less than five tpy are exempt. These levels are identical to the existing PM₁₀ permit thresholds. The State also retained the existing thresholds for the pollutants identified as PM_{2.5} precursors, sulfur dioxide and nitrogen oxides: five tpy in areas which are nonattainment for any criteria pollutants, and ten tpy in areas that are in attainment for all criteria pollutants.

¹ On May 23, 2013 (78 FR 30830), we separately proposed approval of revisions to Colorado’s Prevention of Significant Deterioration (PSD) program in Part D of Regulation Number 3 to address the requirements for PSD programs set out in the 2008 PM_{2.5} NSR Implementation Rule, including recognition of PM_{2.5} precursors in the definition of “regulated NSR pollutant.”

EPA proposes to approve these revisions to Parts A and B. In particular, we note that the revised construction permit program must be adequate to ensure that construction or modification of a stationary source will not interfere with attainment or maintenance of the PM_{2.5} standards. See 40 CFR 51.160(a)(2). A technical support document provided in the docket for this rulemaking reviews monitored PM_{2.5} design values in Colorado since 2001. As detailed in the document, with respect to the PM_{2.5} standards, air quality in Colorado is generally good. Based on the combination of this air quality data and the particular threshold levels selected by Colorado, EPA proposes to approve the thresholds.

In addition, in paragraph III.D.2 of Part B, which contains reasonably available control technology (RACT) requirements for certain new or modified minor sources, Colorado added sources of volatile organic compounds (VOCs). This responded to Colorado's previous removal of these sources, which would have relaxed the stringency of the SIP. As Colorado's reinstatement of VOC sources restores this provision to its previous state, we propose to approve the change.

The cover letter to Colorado's May 25, 2011 submittal identified the specific regulations the State requested that EPA approve into the SIP, including minor editorial changes in Parts A, B, and D of Regulation 3. These Parts of Colorado's Regulation 3 address the State's permitting and PSD program. However, editorial changes were also made to Part C of the regulation. Part C is the State's Title V permitting program and is not part of the SIP. Since the State included these non-SIP regulatory changes in Part C, EPA is taking no action on them.

IV. What Action is EPA Taking?

We have evaluated Colorado's June 11, 2008, June 18, 2009 and May 25, 2011 submittals regarding revisions to the State's Regulation 3. We are proposing to approve the revisions. Specifically, we are proposing to approve the revision in the June 18, 2009 submittal to Regulation 3, Part A, Section VI.D.1. to the extent it increases construction permit processing fees as set forth in Colorado Revised Statute Section 27-7-114.7. All other fee increases are outside the scope of this SIP revision action.

We also propose to approve the revisions to Parts A and B of Regulation 3 in the May 25, 2011 submittal to approve the addition of PM_{2.5} to the definitions of "air pollutant" and "criteria pollutant" in Part A, and the revisions of Part B to reflect Colorado's regulation of PM_{2.5} in the State's construction permit program, including PM_{2.5} thresholds. We also propose to approve Colorado's reinstatement of VOC sources to RACT requirements in Part B. Finally, we propose to approve the minor editorial changes made throughout Regulation 3, Parts A, B, and D.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian

country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated August 28, 2013

Shaun L. McGrath
Regional Administrator
Region 8

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